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No. 89-1276

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DEBBIE BLOMMAERT,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, THIRD JUDICIAL DISTRICT

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1.

The Appellate Court applied an improper standard to the limitation on defendant's right of confrontation.

The issue before this Court is whether a State reviewing court applied the

standard as set forth by this Court in Delaware v. Van Arsdall, 475 U.S. 673, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986), in evaluating the limitation on the right of confrontation. The answer is no.

The Appellate Court applied the standard specifically rejected by this Court in Delaware v. Van Arsdall, 475 U.S. 673, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986). The Appellate Court, in concluding there had been limitation of cross-examination as to the witness' bias, held there was no need to reverse, because:

> "We find the trial court's decision to exclude that evidence did not result in manifest prejudice to the defendant." (App. 30)

This standard was specifically rejected by this Court in Delaware v. Van

Arsdall. There, this Court stated:

> "The State somewhat tentatively suggests that a defendant should have to show 'outcome determinative' prejudice in order to state a violation of the Confrontation Clause: Unless the particular limitation on cross-examination created a reasonable possibility that the jury returned an inaccurate guilty verdict, that limitation would not violate the Confrontation Clause. We disagree. While some constitutional claims by their nature require a showing of prejudice with respect to the trial as a whole, see, e.g., Strickland v Washington, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984) (ineffective assistance of counsel), the focus of the Confrontation Clause is on individual witnesses. Accordingly, the focus of the prejudice inquiry in determining whether the confrontation right has been violated must be on the particular witness, not on the outcome of the entire trial. It would be a contradiction in terms to conclude that a defendant denied any opportunity to cross-examine the witnesses against him nonetheless had been afforded his right to 'confront[ation]' because use of

> that right would not have affected the jury's verdict." 89 L.Ed.2d at 683-84. (Emphasis added.)

Where there has been a denial of the right of confrontation by limiting evidence of bias, to determine whether the limitation causes a constitutional violation requiring a new trial, the reviewing court must consider

> "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." 89 L.Ed.2d at 686-87.

The State Appellate Court did not consider any of these factors.[1]

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1. The Appellate Court stated:

> "Furthermore, as is often stated in Illinois law, a defendant is entitled to a fair trial, not a perfect one. (People v. Jackson (1986), 145 Ill. App. 3d 789, 795.) A conviction will not automatically be reversed merely because error was committed at trial because trial error may be harmless if it is consequential or if it appears that it did not affect the outcome of the trial. (People v. Hunter (1984), 124 Ill. App. 3d 516.) On review, the appellate court's purpose is not to determine whether the record is completely free from error, but whether any error occurred which prejudiced the defendant or which unduly affected the outcome below. (People v. Miles (1986), 151 Ill. App. 3d 485.) Upon a careful review of the record, we find that any error was harmless beyond a reasonable doubt, and neither reversal of the defendant's conviction nor a new trial is required. People v. Foley (1982), 109 Ill. App. 3d 1010."

The Appellate Court did not discuss the factors relevant to the standard enunciated in Van Arsdall, even though this Court's decision in Van Arsdall predated the opinion of the Appellate Court by more than three years. Instead, the State reviewing court merely referred to general principles of how defendant does not have a right to a perfect trial, and made a general reference to finding the evidence harmless beyond a reasonable doubt, with no discussion of the issues this Court held to be vital for consideration.

Surely, the general reference to "harmless beyond a reasonable doubt" and citation of People v. Foley, a case that predated this Court's Van Arsdall opinion by four years, does not prove application of the proper standard.

Additionally, the Appellate Court's reliance on these totally inapplicable cases, (see Original Petition, pp. 17-18), and its failure to discuss the issues this Court held relevant in Delaware v. Van Arsdall, supra, demonstrate it did not apply the proper standard.[2]

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2. If the Appellate Court had applied the proper standard in this case, the result would have been a finding that the improper limitation on cross-examination was, indeed, harmful and not harmless error. See pp. 19-28 of the Petition for Certiorari, explicating how application of the proper standard results in a finding of prejudicial error. In sum: Application of a proper constitutional standard demonstrates the error could not be harmless because: (a) the evidence of guilt was all circumstantial; (b) it was, at most, very weak; (c) the evidence of this witness was crucial in that it was the only evidence of other prior bad acts toward her child and the sole evidence of "consciousness of guilt"; (d) the limitation of cross-examination was extensive, it related to her assisting in a lawsuit against defendant and her husband and was evidence of motive for the witness to fabricate. The State (Footnote continued)

CONCLUSION

For the reasons set out in the Petition for Certiorari, as amplified by this Reply, certiorari should be allowed so that this Court may (a) consider the duty of a State reviewing court in assessing a claim of limitation of cross-examination and confrontation; and/or (b) remand this cause with directions that the Appellate Court reconsider the issue in the light of the constitutional mandate of this Court in Van Arsdall, supra.

Respectfully submitted,

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erroneously infers (Resp. Br., p. 3) that the witness testified before the jury as to evidence relating to her bias. Such testimony occurred out of the jurors presence.